

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 223

BY EDUCATION COMMITTEE

AN ACT

RELATING TO VICTIMS OF CRIMES; AMENDING SECTION 9-340B, IDAHO CODE, TO PROVIDE A PUBLIC RECORDS EXEMPTION; AND AMENDING CHAPTER 53, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-5306A, IDAHO CODE, TO PROVIDE FOR THE CONFIDENTIALITY OF THE IDENTITY OF VICTIMS OF CERTAIN SEXUAL CRIMES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-340B, Idaho Code, be, and the same is hereby amended to read as follows:

9-340B. RECORDS EXEMPT FROM DISCLOSURE – LAW ENFORCEMENT RECORDS, INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS, WORKER'S COMPENSATION. The following records are exempt from disclosure:

(1) Investigatory records of a law enforcement agency, as defined in section 9-337(7), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(2) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles, shall be exempt from public disclosure pursuant to section 20-533A, Idaho Code.

(4) (a) The following records of the department of correction:

(i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code;

(ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses;

(iii) Records that reflect future transportation or movement of a prisoner;

1 (iv) Records gathered during the course of the presentence investigation;

2 (v) Records of a prisoner, as defined in section 9-337(10), Idaho Code, or
3 probationer shall not be disclosed to any other prisoner or probationer.

4 (b) Records of buildings, facilities, infrastructures and systems held by or in the custody
5 of any public agency only when the disclosure of such information would jeopardize
6 the safety of persons or the public safety. Such records may include emergency
7 evacuation, escape or other emergency response plans, vulnerability assessments,
8 operation and security manuals, plans, blueprints or security codes. For purposes of
9 this section "system" shall mean electrical, heating, ventilation, air conditioning and
10 telecommunication systems.

11 (c) Records of the commission of pardons and parole shall be exempt from public
12 disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code.
13 Records exempt from disclosure shall also include those containing the names, addresses
14 and written statements of victims.

15 (5) Voting records of the sexual offender classification board. In accordance with section
16 18-8315, Idaho Code, the written record of the vote to classify an offender as a violent sexual
17 predator by each board member in each case reviewed by that board member shall be exempt
18 from disclosure to the public and shall be made available upon request only to the governor,
19 the chairman of the senate judiciary and rules committee, and the chairman of the house of
20 representatives judiciary, rules and administration committee, for all lawful purposes.

21 (6) Records of the sheriff or Idaho state police received or maintained pursuant to section
22 18-3302, Idaho Code, relating to an applicant or licensee.

23 (7) Records of investigations prepared by the department of health and welfare pursuant
24 to its statutory responsibilities dealing with the protection of children, the rehabilitation of
25 youth, adoptions and the commitment of mentally ill persons.

26 (8) Records including, but not limited to, investigative reports, resulting from
27 investigations conducted into complaints of discrimination made to the Idaho human rights
28 commission unless the public interest in allowing inspection and copying of such records
29 outweighs the legitimate public or private interest in maintaining confidentiality of such
30 records. A person may inspect and copy documents from an investigative file to which he
31 or she is a named party if such documents are not otherwise prohibited from disclosure by
32 federal law or regulation or state law. The confidentiality of this subsection will no longer
33 apply to any record used in any judicial proceeding brought by a named party to the complaint
34 or investigation, or by the Idaho human rights commission, relating to the complaint of
35 discrimination.

36 (9) Records containing information obtained by the manager of the Idaho state insurance
37 fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees
38 contained in underwriting and claims for benefits files.

39 (10) The worker's compensation records of the Idaho industrial commission provided that
40 the industrial commission shall make such records available:

41 (a) To the parties in any worker's compensation claim and to the industrial special
42 indemnity fund of the state of Idaho; or

43 (b) To employers and prospective employers subject to the provisions of the Americans
44 with disabilities act, 42 U.S.C. 12112, or other statutory limitations, who certify that
45 the information is being requested with respect to a worker to whom the employer has

extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction; or

(e) Although a claimant's records maintained by the industrial commission, including medical and rehabilitation records, are otherwise exempt from public disclosure, the quoting or discussing of medical or rehabilitation records contained in the industrial commission's records during a hearing for compensation or in a written decision issued by the industrial commission shall be permitted; provided further, the true identification of the parties shall not be exempt from public disclosure in any written decision issued and released to the public by the industrial commission.

(11) Records of investigations compiled by the commission on aging involving vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.

(12) Criminal history records and fingerprints, as defined by section 67-3001, Idaho Code, and compiled by the Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

(13) Records furnished or obtained pursuant to section 41-1019, Idaho Code, regarding termination of an appointment, employment, contract or other insurance business relationship between an insurer and a producer.

(14) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility.

(15) Except as provided in section 72-1007, Idaho Code, records of the Idaho industrial commission relating to compensation for crime victims under chapter 10, title 72, Idaho Code.

(16) Records or information identifying a complainant maintained by the department of health and welfare pursuant to section 39-3556, Idaho Code, relating to certified family homes, unless the complainant consents in writing to the disclosure or the disclosure of the complainant's identity is required in any administrative or judicial proceeding.

(17) Records or information identifying a victim of a sexual crime, pursuant to the provisions of section 19-5306A, Idaho Code.

SECTION 2. That Chapter 53, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-5306A, Idaho Code, and to read as follows:

19-5306A. CONFIDENTIALITY OF THE IDENTITY OF VICTIMS OF SEXUAL CRIMES. (1) Any information contained in the records listed in this section or the information contained in the form used to designate a pseudonym pursuant to subsection (3) of this section that reveals the identity of a victim of a crime listed in section 18-8304(1)(a), Idaho Code, or a crime in another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the crimes listed in section 18-8304(1)(a), Idaho Code, including, but not limited to, the victim's photograph,

likeness, name, address or telephone number, shall be confidential. The records subject to this section are:

- (a) Court records, including testimony from witnesses;
 - (b) Law enforcement records including, but not limited to, intelligence or investigative data, reports of crime or incidents of criminal activity or other information;
 - (c) Criminal history records as that term is defined in section 67-3001, Idaho Code; and
 - (d) Records kept pursuant to chapter 83, title 18, Idaho Code.
- (2) Subsection (1) of this section shall not apply to:
- (a) A defendant charged with a crime referenced in subsection (1) of this section and the attorney for such defendant, but only provided that:
 - (i) The information is necessary to the preparation of the defendant's defense;
 - (ii) The defendant and the attorney shall not disclose the identifying information to any other person except, as necessary, to those persons directly involved in the preparation of the defense; and
 - (iii) Any person to whom disclosure is made pursuant to this paragraph is bound by the prohibition provided for in subsection (1) of this section; or
 - (b) A court of competent jurisdiction, provided that:
 - (i) The court has received an application requesting the identifying information;
 - (ii) The person making the application demonstrates to the satisfaction of the court that good cause exists for the disclosure;
 - (iii) The disclosure will not place the victim at risk of personal harm; and
 - (iv) Reasonable notice of the application and an opportunity to be heard have been given to the victim; or
 - (c) A nonprofit organization or public agency whose purpose is to provide counseling, services for the management of crises or other assistance to the victims of crimes, provided that:
 - (i) The organization or agency needs identifying information of victims to offer such services; and
 - (ii) The court or a law enforcement agency approves the organization or agency for receipt of the identifying information; or
 - (d) Any publication or broadcast by the media concerning the sexual crime.
- (3) A law enforcement agency investigating a crime listed in section 18-8304(1)(a), Idaho Code, shall designate a reasonable pseudonym to be used instead of the victim's name on all documents related to that investigation. The reasonable pseudonym is confidential and shall not be disclosed to any other person except as permitted pursuant to subsection (2) of this section.
- (a) The law enforcement agency shall maintain the victim's true name in a manner that protects the confidentiality of that name.
 - (b) The law enforcement agency shall:
 - (i) Make a good faith effort to use the pseudonym for the name of the victim on all reports, files and records in the agency's possession;
 - (ii) Notify the prosecuting attorney of the county whose jurisdiction is affected by the investigation of the pseudonym. The prosecutor shall ensure that the victim is designated by the pseudonym in all documents produced by the prosecutor's office and in all court filings and shall not disclose the victim's true name except as provided for in subsection (2) of this section or as directed by a court of competent

1 jurisdiction. If prosecution is commenced against the defendant with regard to the
2 victim, the prosecutor shall notify the court of the pseudonym; and

3 (iii) Notify the court, which has jurisdiction over any criminal proceeding arising
4 out of the investigation, of the pseudonym. The court shall ensure that the victim
5 is designated by the pseudonym in all legal proceedings concerning the crime and
6 shall not disclose the victim's true name unless the court finds, subject to the terms
7 and conditions that the court may impose, that the information is essential in the
8 trial of the defendant accused of the crime.

9 (4) A governmental entity and its employees, while acting within the course and scope
10 of their employment and without malice or criminal intent and without reckless, willful and
11 wanton conduct as defined in section 6-904C, Idaho Code, shall not be liable for a claim for
12 failure to comply with the requirements of this section.

13 (5) A victim who has suffered injury as the proximate cause of a violation of the
14 provisions of this section may bring an action for recovery of actual damages and any punitive
15 damages that the facts may warrant.

16 (6) The provisions of this section shall not apply if the victim waives, in writing, the
17 confidentiality of the information concerning said victim's identity.